

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)

U.S. Army, (b) (7)(C))

Headquarters and Headquarters Company, U.S.)

Army Garrison, Joint Base Myer-Henderson Hall,)

Fort Myer, VA 22211)

**DEFENSE SPECIFIC
OBJECTION UNDER R.C.M.
1001(b)(4) FOR UNDER
SECRETARY PATRICK
KENNEDY**

DATED: 5 August 2013

RELIEF SOUGHT

1. COMES NOW PFC Bradley E. Manning, by counsel, pursuant to applicable case law and Rule for Courts Martial (R.C.M.) 1001(b)(4), requests this Court to sustain the Defense's specifically lodged objections to Under Secretary Patrick Kennedy's testimony.

STANDARD

2. A military judge's decision to admit or exclude evidence is reviewed for an abuse of discretion. *United States v. Stephens*, 67 M.J. 233, 235 (C.A.A.F. 2009).

DISCUSSION

3. The Defense specifically objected to the following testimony by Under Secretary Kennedy:

(a) The testimony related to the diminution of reporting through diplomats in the field and through those that would speak to Department of State (DOS) diplomats in various countries. Under Secretary Kennedy indicated that he believed the diminution of reporting was due to a chilling effect caused by the charged leaks in this case. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4).

(b) The testimony related to the belief that if we (United States) do not have the trust of others, we cannot get accurate information and that if we (United States) do not get accurate information we cannot compile a complete product. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4).

(c) The testimony related to the belief that non-governmental persons were no longer willing to talk fully and frankly with United States diplomats due to the charged leaks in this

case. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4).

(d) The testimony related to the belief that some embassies included less information in their reporting than they did before out of fear that the information would not be protected. Under Secretary Kennedy testified that the act of reporting less information was a self-generated limitation on information from various embassies and not as a result of direction by the DOS. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4).

(e) The testimony related to the belief that the disclosures had a chilling effect on diplomatic reporting and that the disclosures have had and will continue to have an impact on reporting for some indefinite time period. The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4) and also as being speculative.

(f) The testimony that due to the perceived chilling effect on diplomatic reporting, the decrease in information has had a negatively effect on policy makers in Washington D.C. and our interagency partners. Specifically, Under Secretary Kennedy testified that policy decisions are being made based upon incomplete information (because other countries chose not to engage in full and frank reporting, which reporting is relied on by policy makers). The Defense objects to this testimony as not be directly related to or resulting from PFC Manning's misconduct under R.C.M. 1001(b)(4) and also as being speculative. The Defense also objects based on foundation since Under Secretary Kennedy did not explain how he is familiar with policy making, the various variables that go into policy making, and how diplomatic reporting fits into policy making. Also, "policy making" is an extremely broad category. Under Secretary Kennedy did not explain what type of policy making he was referring to and certainly he is not an expert on "policy making" in general.

CONCLUSION

4. In light of the foregoing, the Defense requests this Court to disregard the improper testimony offered by Government through Under Secretary Kennedy.

Respectfully submitted,



DAVID EDWARD COOMBS
Civilian Defense Counsel